

### **Remarks**

By this amendment, no claims are added or cancelled. Claim 65 and 68-71 thus remain pending the application. Claim 65 is amended solely to add the connective term “and.”

Reconsideration of the application is respectfully requested.

### ***Cited Patents***

**Claim 65** stands rejected as allegedly being anticipated by the teachings of U.S. Patent No. 5,399,132 (Bailey). That rejection now should be withdrawn.

Bailey does not show or suggest the “spaced apart” poles called for in claims 65 and 68. Bailey instead shows plural pole assemblies, all of which are immediately adjacent to one another.

Because Bailey used a lattice of interwoven ropes on “U-shaped” pole-structured members (e.g. made of tubing material) to form his barrier, it was necessary for Bailey to adjacently position his pole assemblies in order to completely surround a trampoline with a fall prevention barrier.

All things being equal, Bailey’s adjacent pole assemblies require about twice the length of tubing (twice the weight of tubing) as comparable enclosure systems of claims 65 and 68. As compared to a comparable enclosure system of claim 65 or 68, a Bailey enclosure, with its adjacent pole assemblies, weighs at least twice as much. This difference in size and weight causes the Bailey system to have several disadvantages when compared to comparable enclosure systems of claim 65 or 68.

In his preferred enclosure (FIGS. 1-6), Bailey’s adjacent pole assemblies are secured together with ropes. For that reason, Bailey’s preferred enclosure has about twice the inertia or resistance to movement as comparable enclosure system of claim 65 or 68. This means that the body of a jumper impacting a preferred Bailey enclosure will need to absorb substantially more of the collision energy during the first moment of impact thus increasing the injury potential as compared to a spaced apart pole configuration which has no more than about half the inertia of the Bailey enclosure. In a second configuration (FIG. 7) that is “not preferred” (col. 4, line 44), Bailey’s adjacent poles do not appear to be lashed together by ropes. In this second configuration, wherein it is critical for Bailey’s pole assemblies to be immediately adjacent to

avoid gaps that would allow a jumper to fall off, Bailey's poles would have twice the mass and volume of tubing material as a comparable spaced-apart pole enclosure system of claims 65 or 68.

All the additional tubing material makes the Bailey enclosure more difficult to put up and take down.

As discussed beginning at page 29, line 19 of the specification, presently claimed enclosure systems typically can be provided in compact, lightweight packages as compared to the Bailey enclosure which, because it requires so much tubing material, is less portable and thus more cumbersome and costly for retailers and consumers to move and store.

And because twice the amount of tubing material is required, a Bailey enclosure typically would be much more expensive than a comparable, presently claimed enclosure system.

Furthermore, the Bailey patent does not teach or suggest a system where each pole terminates at an end positioned below the rebounding mat and at an end positioned five to eight feet above the rebounding mat as specified in claims 65 and 68. Prior to the present invention, it was not intuitive that such a system could be used safely and effectively.

It is not proper to infer the height of Bailey's "U-shaped" pole-structured members because the Bailey drawings are not indicated as being to scale. See MPEP 2125:

PROPORTIONS OF FEATURES IN A DRAWING ARE NOT EVIDENCE OF  
ACTUAL PROPORTIONS WHEN DRAWINGS ARE NOT TO SCALE

When the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value. See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000) (The disclosure gave no indication that the drawings were drawn to scale. "[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue."). However, the description of the article pictured can be relied on, in combination with the drawings, for what they would reasonably teach one of ordinary skill in the art. *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977) ("We disagree with the Solicitor's conclusion, reached by a comparison of the relative dimensions of appellant's and *Bauer's* drawing figures, that *Bauer* 'clearly points to the use of a chime length of roughly 1/2 to 1 inch for a whiskey barrel.' This ignores the fact that *Bauer* does not disclose that his drawings are to scale. ... However, we agree with the Solicitor that *Bauer's* teaching that whiskey

losses are influenced by the distance the liquor needs to 'traverse the pores of the wood' (albeit in reference to the thickness of the barrelhead)" would have suggested the desirability of an increased chime length to one of ordinary skill in the art bent on further reducing whiskey losses." 569 F.2d at 1127, 193 USPQ at 335-36.)

The significance of the improvements of the inventions of claims 65 and 68 is evidenced by the fact that, prior to the effective filing date of this patent application, sales of trampoline safety enclosures were miniscule despite a long-recognized need to reduce the injuries associated with trampoline use. The first truly successful trampoline enclosure systems were systems of the type defined by claims 65 and 68. Such systems first were distributed by JumpSport, Inc., which owns the present patent application and its progenitors. After JumpSport introduced enclosure systems of the type specified by claims 65 and 68, that employ relatively short, cost-effective poles, more than a million (1,000,000) of such enclosure systems (including systems made by infringers of the patents issued from the parent and grandparent applications) have been sold and have significantly reduced the occurrence of trampoline-related injuries.

Bailey worked diligently to commercialize and profit from the enclosure shown in his patent and he did sell some units, but Bailey's enclosure was not copied; and it did not achieve commercial success in the marketplace. In contrast, the presently claimed enclosures, having spaced-apart, relatively short poles, quickly achieved commercial success and spawned several copyists who also distributed such enclosures. The unobviousness of JumpSport's enclosure systems, having relatively short, cost-effective, spaced apart poles of the type specified in claims 65 and 68, is demonstrated by the fact that neither Bailey nor anyone else marketed such enclosure systems before their introduction by JumpSport, Inc., and by the subsequent overwhelming success of such enclosure systems.

The enclosure systems of claims 65 and 68 are neither shown or suggested by the prior art, including Bailey. The rejection thus should be withdrawn.

**Claim 68.** Further with regard to claim 68, Bailey neither shows nor suggests "a protective covering located at the upper end of at least one of the poles", which is a substantial advantageous feature of the enclosure system of claim 68. Despite apparently extensive prior art searching conducted in association with the defense of a patent infringement lawsuit relating to

the parent and grandparent patents (US 6,261,207 and US 6,053,845; *JumpSport, Inc. v. JumpKing, Inc., et al.*, U.S. District Court, ND Cal., No. C 01-4986 PJH), there was no discovery of a prior art trampoline enclosure system that employed a protective covering located at the upper ends of poles.

None of the previous descriptions of trampoline enclosures suggested the use of protective coverings located at the upper end of at least one of the poles. Other devices were employed to protect jumpers, notably, inverted U-shaped poles which had no exposed upper ends (Bailey), extremely tall vertical poles that extended beyond the potential impact zone, and tall cage-like structures. It was not until the present invention that anyone thought it possible to use protective coverings on the top of relatively short poles to protect jumpers. This was not a trivial discovery. A falling body carries a great deal of energy and absorbing that energy on a small impact point on the upper end of a pole could cause injuries. It was a significant discovery that it is possible to safely use poles with protective coverings at the level of the potential impact zone.

Live impact testing proved that this combination, surprisingly, did provide sufficient protection from injury because the poles were independent -- capable of flexing and bending out of the way when impacted on their sides or tops. This never-before-seen combination of independent poles with protective coverings at their upper ends enabled the use of shorter poles that do not extend beyond the impact zone, and this allows for a smaller/lower-cost and less-obtrusive/more-appealing structures.

The examiner is invited to point out where in Bailey “a protective covering located at the upper end of at least one of the poles” is shown. Absent such a showing, the rejection of claim 68 should be removed.

**Claim 69.** Bailey neither shows nor suggests “resilient material covering at least a portion of at least one of the poles above the level of the rebounding mat”, which is a substantial advantageous feature of the enclosure system of claim 69. Despite apparently extensive prior art searching conducted in association with the defense of a patent infringement lawsuit relating to the parent and grandparent patents (US 6,261,207 and US 6,053,845; *JumpSport, Inc. v. JumpKing, Inc., et al.*, U.S. District Court, ND Cal., No. C 01-4986 PJH), there was no discovery of a prior art trampoline enclosure system that employed resilient material covering at least a

portion of at least one of the poles of a trampoline enclosure system above the level of the rebounding mat.

None of the prior enclosures, including Bailey, ever included resilient material. And there is nothing to indicate that the use of resilient material would have been obvious. It, in fact, took months of testing to determine how to construct a system to benefit from the shock-absorption properties of resilient material on the poles.

That there was a long-felt and great need for an affordable, protective enclosure system is evidenced by tens of thousands of trampoline injuries each year. And yet, never in the history of trampoline use had someone thought to combine independent poles with resilient material.

The examiner is invited to point out where in Bailey “resilient material covering at least a portion of at least one of the poles above the level of the rebounding mat” is shown. Absent such a showing, the rejection of claim 69 should be removed.

**Claims 70-71** refer to a type of pole that has two ends that are positioned below the rebounding mat, as would be the case with the members (shaped generally like an inverted U) that constitute the pole assemblies 18 of Bailey. Enclosure systems defined by claim 70-71 are nevertheless distinct from Bailey.

In particular, Bailey does not show or suggest the “spaced apart” poles called for in claims 70-71. Bailey instead shows pole assemblies, all of which are adjacent to one another. (JumpSport, Inc. was the first to disclose, via the issuance of US 6,053,845, an enclosure system having an independent, inverted U-shaped pole spaced apart from other independent poles.)

Because Bailey used a lattice of interwoven ropes on “U-shaped” pole-structured members (e.g. made of tubing material) to form his barrier, it was necessary for Bailey to adjacently position his pole assemblies in order to completely surround a trampoline with a fall prevention barrier.

All things being equal, Bailey’s adjacent pole assemblies require about twice the length of tubing (twice the weight of tubing) as comparable enclosure systems of claims 70 and 71. As compared to a comparable enclosure system of claim 70 or 71, a Bailey enclosure, with its adjacent pole assemblies, weighs at least twice as much. This difference in size and weight causes the Bailey system to have several disadvantages when compared to comparable enclosure systems of claim 70 or 71.

In his preferred enclosure (FIGS. 1-6), Bailey's adjacent pole assemblies are secured together with ropes. For that reason, Baileys' preferred enclosure has about twice the inertia or resistance to movement as comparable enclosure system of claim 70 or 71. This means that the body of a jumper impacting a preferred Bailey enclosure will need to absorb substantially more of the collision energy during the first moment of impact thus increasing the injury potential as compared to a spaced apart pole configuration which has no more than about half the inertia of the Bailey enclosure. In a second configuration (FIG. 7) that is "not preferred" (col. 4, line 44), Bailey's adjacent poles do not appear to be lashed together by ropes. In this second configuration, wherein it is critical for Bailey's pole assemblies to be immediately adjacent to avoid gaps that would allow a jumper to fall off, Bailey's poles would have twice the mass and volume of tubing material as a comparable spaced-apart pole enclosure system of claim 70 or 71.

As discussed beginning at page 29, line 19 of the specification, enclosure systems of the present invention typically can be provided in compact, lightweight packages as compared to the Bailey enclosure which, because it requires so much tubing material, is less portable and thus more cumbersome and costly for retailers and consumers to move and store.

All the additional tubing material makes the Bailey enclosure more difficult to put up and take down than a comparable enclosure system of claim 70 or 71.

And because twice the amount of tubing material is required, a Bailey enclosure would be much more expensive than a comparable enclosure system of claim 70 or 71.

The examiner is invited to point out where in Bailey "spaced apart poles" are shown. Absent such a showing, the rejections of claim 70 and 71 should be removed.

### ***Claims 65/70***

The Office action, at the paragraph which bridges pages 2 and 3, inquires how claim 70, which calls for "at least one of the poles has both of its ends positioned below the rebounding mat" can be consistent with claim 65 which calls for "each pole terminating at an end positioned above the rebounding mat and at an end positioned below the rebounding mat."

This is an improper inquiry. Claims 65 and 70 are distinct. Claim 70 does not depend, directly or indirectly, from claim 65. Thus the language of claim 70 need not be consistent with the language of claim 65.

*Coan, et al.*

The Office action, at page 3, makes the assertion that certain inverted U-shaped constructions are shown or suggested by the teachings of U.S. 5,941,798 (Coan, et al.).

The application which produced the Coan, et al. patent was filed on **October 8, 1998**.

The present application claims priority from U.S. Application No. 09/100,586, filed, **June 19, 1998**, and claims the benefit of U.S. Provisional Application No. 60/050,323, filed **June 20, 1997**, U.S. Provisional Application No. 60/052,052, filed **July 9, 1997**, and U.S. Provisional Application No. 60/087,835, filed **June 3, 1998**.

Thus the Coan, et al. patent should not be cited as prior art against claims pending in the present application.

*Information Disclosure Statements*

Information disclosure statements were filed on March 5, 2001, April 29, 2004, July 2, 2004, and January 31, 2005, for this application.

It is respectfully requested that the submitted information be considered and that such consideration be acknowledged.

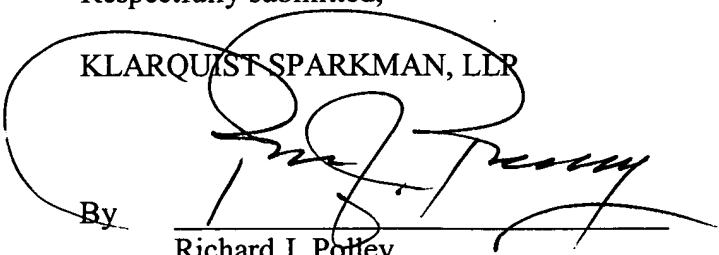
*Conclusion*

This application is now in condition for allowance, and a Notice of Allowance is requested.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By

  
Richard J. Polley

Registration No. 28,107

One World Trade Center, Suite 1600  
121 S.W. Salmon Street  
Portland, Oregon 97204  
Telephone: (503) 595-5300  
Facsimile: (503) 228-9446